



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II, SUITE 7000
GUAYNABO, PUERTO RICO 00968-8069

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Manuel Mata
President
AES Puerto Rico, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

**Re: Notification of Closure of Administrative Order on Consent
Transmittal of Enforcement Case Support Inspection Report
Request to Provide Information and Respond to Inspection's Findings**

Dear Mr. Mata:

This letter concerns the Enforcement Case Support Inspection (Inspection) conducted by a duly authorized enforcement officer of the United States Environmental Protection Agency (EPA) at the AES Puerto Rico, L.P.'s (AES) Coal-Fired Steam Power Plant and Marine Cargo Handling Dock located in Guayama, Puerto Rico (the "Facility"). Also, EPA provides its response to AES' Request for Termination of the Administrative Order on Consent (AOC), Docket Number CWA-02-2015-3102, which was executed by AES and EPA on March 18, 2015.

1. Enforcement Case Support Inspection and Request for Information

On August 12, 2016, a duly authorized EPA enforcement officer performed an Inspection of the Facility. The purposes of the Inspection were to evaluate AES's compliance with the AOC, and the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities (2015 MSGP), which was issued under Section 402(p) of the Clean Water Act (CWA), on June 4, 2015.

Attachment 1 includes a copy of the Water Compliance Inspection Report (Report), which details the findings, comments and areas of concerns. Please pay particular attention to the findings, comments and areas of concerns that requires a response and further actions.

As a result of the Inspection, EPA issues this Request for Information (RFI) to AES pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a). This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further re-delegated to the Director, Caribbean Environmental Protection Division.

The purpose of this RFI is to require AES to submit information to EPA regarding the findings of the Inspection, which were detailed in the aforementioned Report. The information requested will be used to determine compliance with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.¹

Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances. In this instance, the facilities being assessed are the Coal-Fired Steam Power Plant and Marine Cargo Handling Dock, which are located Guayama, Puerto Rico. **Attachment 2** includes the instructions that AES shall follow when preparing its response to this RFI. **Attachment 3** includes the requirements for the delivery of documents and information.

Pursuant to Section 308(a) of the CWA, AES shall submit to EPA a written response to each comment, finding and area of concern included in the Report attached to this letter. EPA is providing AES with an opportunity, for a period of ten (10) calendar days from receipt of this letter, to confer with EPA regarding the information requested, with the following designated EPA official: Mr. José A. Rivera, Lead Environmental Engineer, City View Plaza II - Suite 7000, #48, PR-165, Km 1.2, Guaynabo, Puerto Rico, with phone number (787) 977-5842, and email rivera.jose@epa.gov. In order for AES to avail for this opportunity, AES shall make the request to the EPA official within five (5) calendar days of receipt of this letter.

2. Request for Termination^{2,3}

By letter dated September 6, 2016, AES submitted to EPA its Request for Termination of the AOC. Based on EPA's review of the records that AES submitted to EPA pursuant to the requirements of the AOC, and the results of the Inspection, EPA is providing AES notice that the AOC is terminated. The effective date of the AOC termination is date of this letter.

Nonetheless, issuance of this letter shall not be deemed an election by EPA to forego any administrative or judicial action for penalties, fines, or other appropriate relief under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, which resulted from EPA evaluations and investigations of AES' compliance with the CWA.

¹ Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person is in violation of Section 301(a) of the CWA, EPA shall require the submission of any information reasonably necessary to make such a determination.

² Paragraph 90 of the AOC provides that after AES has complied with all the Ordered Provisions of the AOC, AES may serve upon EPA a Request for Termination, stating that AES has satisfied those requirements, together with all necessary supporting documentation.

³ Paragraph 91 of the AOC provides that following receipt by EPA of AES' Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and Respondent shall confer informally concerning the Request and any disagreement that EPA and AES may have as to whether AES has satisfactorily complied with the requirements for termination of the AOC. Also, Paragraph 91 of the AOC indicates that if EPA agrees, it will close-out the AOC by informing AES in writing of such decision.

If you have any questions concerning the above, please contact Mr. Rivera at (787) 977-5842, or via electronic mail at rivera.jose@epa.gov.

Sincerely,



Carmen R. Guerrero-Pérez
Director
Caribbean Environmental Protection Division

Attachments

- 1) Attachment 1 - Inspection Report
- 2) Attachment 2 - RFI Instructions
- 3) Attachment 3 - Time and Delivery of Documents and Information

cc: Wanda García, EQB (via electronic mail - w/ encl.)

ATTACHMENT 2

RFI Instructions

In responding to this Request for Information, apply the following instructions and definitions:

- a. The signatory should be an officer or agent who is authorized to respond on behalf of AES pursuant to the signatory requirements regulations codified at 40 C.F.R. § 122.22.
- b. A complete separate response must be made to each finding and comment included in the Report. Identify each finding and comment and precede each answer with the finding and comment to which it is addressed.
- c. Interpret "and" as well as "or" to include within the scope of the finding and comment as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing the response to each finding and comment, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the finding and comment pertains, regardless of whether the source is in AES immediate possession.
- e. In answering each finding and comment, identify all contributing sources of information.
- f. If AES is unable to answer a finding and comment in a detailed and complete manner or if AES is unable to provide any of the information or documents requested, indicate the reason for AES inability to do so. If AES has reason to believe that there is an individual who may be able to provide more detail or documentation in response to any finding and comment, state that person's name and last known address and phone number and the reasons for AES' belief.
- g. If anything is deleted from a document produced in response to this RFI, state the reason for and the subject matter of the deletion.
- h. For each document produced in response to this RFI, indicate on the document or in some other reasonable manner, the finding and comment to which it applies. If a document is requested but is not available, state the reason for its unavailability.
- i. If a corrective action is required to address the finding and comment, provide an implementation schedule, including the milestones required to complete the corrective action.

ATTACHMENT 3

Time and Delivery of Documents and Information

The response to this RFI shall be postmarked or received at EPA within forty-five (45) calendar days of receipt of the RFI, and should be mailed to the following address:

Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II - Suite 7000
#48, PR-165, Km 1.2
Guaynabo, Puerto Rico 00968-8069
Attention: Mr. José A. Rivera, Lead Environmental Engineer

AES's response shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to comply in all respects with this RFI within the time specified above may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. §1319, under which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties for each day of continued non-compliance.

Please be advised that AES is under a continuing obligation to supplement its response if information not known or not available to AES as of the date of submission of AES' response should later become known or available to AES. In this instance, AES must supplement its response to EPA within five (5) business days. If at any time in the future AES obtains or becomes aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, AES must notify EPA of this fact immediately and provide a corrected response within five (5) business days. If any part of the response is found to be untrue, you may be subject to criminal prosecution.

This RFI is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. AES may, if you so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Subpart B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the response to the attached RFI when it is received by EPA, it may be made available to the public by EPA without further notice

to AES. Please read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If AES desires confidential treatment of information only until a certain date or until the occurrence of a certain event, AES' response should state so.

